



February 20, 2002

ENGROSSED

HOUSE BILL No. 1116

DIGEST OF HB 1116 (Updated February 19, 2002 12:04 PM - DI 75)

Citations Affected: IC 8-1.

Synopsis: Energy utilities. Provides that the IURC has jurisdiction over certain merchant power plants. Encourages: (1) new energy generating facilities in Indiana that use clean coal technology and are fueled using Illinois Basin coal resources; (2) advanced technologies that reduce regulated air emissions from existing generating plants; (3) projects to provide electric transmission facilities; (4) projects to develop alternative energy sources, including renewable energy projects; and (5) the purchase by energy utilities of fuels produced by coal gasification facilities in Indiana. Directs the IURC to encourage clean coal and energy projects through financial incentives. Directs the state utility forecasting group to conduct an annual study on the use, availability, and economics of using renewable energy resources in Indiana and to submit a report of its findings to the IURC.

Effective: Upon passage.

Fry, Pelath

(SENATE SPONSORS — SERVER, LANANE, BRODEN)

January 8, 2002, read first time and referred to Committee on Commerce, Economic Development and Technology.

January 30, 2002, amended, reported — Do Pass.

February 4, 2002, read second time, amended, ordered engrossed.

February 5, 2002, engrossed. Read third time, recommitted to Committee of One, amended; passed. Yeas 64, nays 32.

February 6, 2002, re-engrossed.

SENATE ACTION

February 12, 2002, read first time and referred to Committee on Commerce and Consumer Affairs.

February 19, 2002, amended, reported favorably — Do Pass.

EH 1116—LS 6645/DI 103+



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February 20, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

ENGROSSED HOUSE BILL No. 1116

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-128 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 128. This section does not apply to any of**
4 **the following:**

5 (1) **A merchant power plant that has filed a petition with the**
6 **commission under IC 8-1-2.5 before March 1, 2002, seeking**
7 **an order that the commission decline to exercise, in whole or**
8 **in part, its jurisdiction over the merchant power plant. This**
9 **section does not apply to the expansion of a merchant power**
10 **plant described in this subdivision if the expansion occurs at**
11 **the same site.**

12 (2) **A corporation operating under IC 8-1-13.**

13 (3) **A nonprofit corporation most of whose members are**
14 **operating under IC 8-1-13.**

15 (4) **A joint agency created and operating under IC 8-1-2.2.**

16 (b) **As used in this section, "merchant power plant" means a**
17 **facility within Indiana used for the:**

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- (1) production of electric energy; and
- (2) sale of electric energy exclusively on the wholesale market to other public utilities, energy service providers, or power marketers within or outside Indiana.

(c) A merchant power plant is subject to the jurisdiction of the commission.

(d) For any petition filed by a merchant power plant under IC 8-1-2.5 or IC 8-1-8.5, the commission may consider the following:

- (1) Location of the merchant power plant.
- (2) Need for the electricity to be generated or other benefits to be provided by the merchant power plant.
- (3) Effect of the merchant power plant on electric, water, and natural gas suppliers and customers.
- (4) Financing for the merchant power plant.
- (5) Other factors the commission considers relevant.

SECTION 2. IC 8-1-8.8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 8.8. Utility Generation and Clean Coal Technology

Sec. 1. (a) The general assembly makes the following findings:

- (1) Growth of Indiana's population and economic base has created a need for new energy generating facilities in Indiana.
- (2) The development of a robust and diverse portfolio of energy generating capacity, including the use of renewable energy resources, is needed if Indiana is to continue to be successful in attracting new businesses and jobs.
- (3) Indiana has considerable natural resources that are currently underutilized and could support development of new energy generating facilities at an affordable price.
- (4) Certain regions of Indiana, such as southern Indiana, could benefit greatly from new employment opportunities created by development of new energy generating facilities utilizing the plentiful supply of coal from the geological formation known as the Illinois Basin.
- (5) Technology can be deployed that allows high sulfur coal from the geological formation known as the Illinois Basin to be burned efficiently while meeting strict state and federal air quality limitations. Specifically, the state should encourage the use of advanced clean coal technology, such as coal gasification.
- (6) It is in the public interest for the state to encourage the



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1 construction of new energy generating facilities that increase
 2 the in-state capacity to provide for current and anticipated
 3 energy demand at a competitive price.

4 (b) The purpose of this chapter is to enhance Indiana's energy
 5 security and reliability by ensuring all the following:

6 (1) Indiana's energy generating capacity continues to be
 7 adequate to provide for Indiana's current and future energy
 8 needs, including the support of the state's economic
 9 development efforts.

10 (2) The vast and underutilized coal resources of the Illinois
 11 Basin are used as a fuel source for new energy generating
 12 facilities.

13 (3) The electric transmission system in Indiana is upgraded to
 14 distribute additional amounts of electricity more efficiently.

15 (4) Jobs are created as new energy generating facilities are
 16 built in regions throughout Indiana.

17 Sec. 2. As used in this chapter, "clean coal and energy projects"
 18 means any of the following:

19 (1) Any of the following projects:

20 (A) Projects at new energy generating facilities that
 21 employ the use of clean coal technology and that are fueled
 22 primarily by coal or gases derived from coal from the
 23 geological formation known as the Illinois Basin.

24 (B) Projects to provide advanced technologies that reduce
 25 regulated air emissions from existing energy generating
 26 plants, such as flue gas desulfurization and selective
 27 catalytic reduction equipment.

28 (C) Projects to provide electric transmission facilities.

29 (2) Projects to develop alternative energy sources, including
 30 renewable energy projects.

31 (3) The purchase of fuels produced by a coal gasification
 32 facility.

33 Sec. 3. As used in this chapter, "clean coal technology" means
 34 a technology (including precombustion treatment of coal):

35 (1) that is used in a new or existing electric generating facility
 36 and directly or indirectly reduces airborne emissions of
 37 sulfur, mercury, or nitrogen oxides or other regulated air
 38 emissions associated with the combustion or use of coal; and

39 (2) that either:

40 (A) is not in general commercial use at the same or greater
 41 scale in new or existing facilities in the United States as of
 42 January 1, 1989; or



(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

Sec. 4. As used in this chapter, "coal gasification facility" means a facility in Indiana that uses a manufacturing process that converts coal into a clean gas that can be used as a fuel to generate energy.

Sec. 5. As used in this chapter, "costs associated with qualified utility system property" means capital, operation, maintenance, depreciation, tax costs, and financing costs of or for qualified utility system property.

Sec. 6. As used in this chapter, "eligible business" means an energy utility (as defined in IC 8-1-2.5-2) that:

- (1) proposes to construct, repower, or acquire a new energy generating facility;
- (2) proposes to construct, repower, or acquire a project described in section 2(1) of this chapter;
- (3) undertakes a project to develop alternative energy sources, including renewable energy projects; or
- (4) purchases fuels produced by a coal gasification facility.

Sec. 7. As used in this chapter, "group" refers to the forecasting group established by IC 8-1-8.5-3.5.

Sec. 8. (a) As used in this chapter, "new energy generating facility" refers to a facility that satisfies all the following:

- (1) The facility is a:
 - (A) newly constructed, newly repowered, or newly acquired energy generation plant; or
 - (B) newly constructed generation capacity expansion at an existing facility;

dedicated primarily to serving Indiana retail customers.

- (2) The acquisition, repowering, construction, or expansion of the facility was completed by an Indiana utility after July 1, 2001.

- (3) The facility has an aggregate rated electric generating capacity of at least one hundred (100) megawatts for all units at one (1) site or a generating capacity of at least four hundred thousand (400,000) pounds per hour of steam.

(b) The term includes the transmission lines and associated equipment that transfers energy from points of supply to points of delivery.

Sec. 9. As used in this chapter, "qualified utility system

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property" means any new energy generating facility used, or to be used, in whole or in part, on a utility system to provide retail energy service (as defined in IC 8-1-2.5-3) regardless of whether the service is provided under IC 8-1-2.5 or another provision of this article.

Sec. 10. (a) As used in this chapter, "renewable energy resources" means alternative sources of renewable energy, including the following:

- (1) Energy from wind.
- (2) Solar energy.
- (3) Photovoltaic cells and panels.
- (4) Dedicated crops grown for energy production.
- (5) Organic waste biomass.
- (6) Hydropower from existing dams.

(b) The term does not include energy from the incineration, burning, or heating of any of the following:

- (1) Waste wood.
- (2) Tires.
- (3) General household, institutional, commercial, industrial lunchroom, office, or landscape waste.
- (4) Construction or demolition debris.

Sec. 11. (a) The commission shall encourage clean coal and energy projects by creating the following financial incentives for clean coal and energy projects:

- (1) The timely recovery of costs incurred during construction and operation of projects described in section 2(1) of this chapter.
- (2) The authorization of up to three (3) percentage points on the overall rate of return that would otherwise be allowed to be earned on projects described in subdivision (1).
- (3) Financial incentives for the purchase of fuels produced by a coal gasification facility, including cost recovery and the incentive available under subdivision (2).
- (4) Financial incentives for projects to develop alternative energy sources, including renewable energy projects.
- (5) Other financial incentives the commission considers appropriate.

(b) An eligible business must file an application to the commission for approval of a clean coal and energy project under this section.

(c) The commission shall promptly review an application filed under this section for completeness. The commission may request



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1 additional information the commission considers necessary to aid
2 in its review.

3 (d) The commission shall issue a determination of a project's
4 eligibility for the financial incentives described in subsection (a)
5 not later than ninety (90) days after the date of the application.

6 Sec. 12. (a) The commission shall provide financial incentives to
7 eligible businesses for new energy generating facilities in the form
8 of timely recovery of the costs incurred in connection with the
9 construction, acquisition, repowering, expansion, operation, or
10 maintenance of the facilities.

11 (b) An eligible business seeking authority to timely recover the
12 costs described in subsection (a) must apply to the commission for
13 approval of a rate adjustment mechanism in the manner
14 determined by the commission.

15 (c) An application must include the following:

16 (1) A schedule for the completion of construction, repowering,
17 acquisition, or expansion of the new energy generating facility
18 for which rate relief is sought.

19 (2) Copies of the most recent integrated resource plan filed
20 with the commission.

21 (3) The amount of capital investment by the eligible business
22 in the new energy generating facility.

23 (4) Other information the commission considers necessary.

24 (d) The commission shall allow an eligible business to recover
25 the costs associated with qualified utility system property if the
26 eligible business provides substantial documentation that the
27 expected costs associated with qualified utility system property and
28 the schedule for incurring those costs are reasonable.

29 (e) The commission shall allow an eligible business to recover
30 the costs associated with the purchase of fuels produced by a coal
31 gasification facility if the eligible business provides substantial
32 documentation that the costs associated with the purchase are
33 reasonable.

34 (f) A retail rate adjustment mechanism proposed by an eligible
35 business under this section may be based on actual or forecasted
36 data. If forecast data is used, the retail rate adjustment mechanism
37 must contain a reconciliation mechanism to correct for any
38 variance between the forecasted costs and the actual costs.

39 Sec. 13. An eligible business shall file a monthly report with the
40 department of commerce stating the following information:

41 (1) The amount of Illinois Basin coal, if any, purchased during
42 the previous month for use in a new energy generating

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1 facility.

2 (2) The amount of any fuel produced by a coal gasification
3 facility and purchased by the eligible business during the
4 previous month.

5 (3) Any other information the department of commerce may
6 reasonably require.

7 Sec. 14. The group shall conduct an annual study on the use,
8 availability, and economics of using renewable energy resources in
9 Indiana. Each year, the group shall submit a report on the study to
10 the commission for inclusion in the commission's annual report to
11 the regulatory flexibility committee described in IC 8-1-2.5-9 and
12 IC 8-1-2.6-4. The report must include suggestions from the group
13 to encourage the development and use of renewable energy
14 resources and technologies appropriate for use in Indiana.

15 SECTION 3. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Economic Development and Technology, to which was referred House Bill 1116, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-2-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6.1. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur or nitrogen based pollutants associated with the combustion or use of coal; and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) As used in this section, "Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

(c) Except as provided in subsection (d), the commission shall allow a utility to recover as operating expenses those expenses associated with:

(1) research and development designed to increase use of Indiana coal; and

(2) preconstruction costs (including design and engineering costs) associated with employing clean coal technology at a new or existing coal burning electric generating facility if the commission finds that the facility:

(A) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal; after the technology is in place.

(d) The commission may only allow a utility to recover

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preconstruction costs as operating expenses on a particular project if the commission awarded a certificate under IC 8-1-8.7 for that project.

(e) The commission shall establish guidelines for determining recoverable expenses.

(f) The commission has jurisdiction over transactions involving the purchase of clean coal technology from third parties, including the purchase of precombustion coal treated by gasification. The commission's jurisdiction includes the authority to review the terms of a transaction and determine whether the transaction is in the public interest.

SECTION 2. IC 8-1-2-83 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 83. (a) ~~No~~ **This section does not apply to the following:**

- (1) A corporation organized or operating under IC 8-1-13.**
- (2) A corporation that:**
 - (A) is organized under IC 23-17; and**
 - (B) has members that are local district corporations (as defined in IC 8-1-13-23).**

(b) As used in this section, "control" means the power to direct the management and policies of a public utility, utility company, or holding company through:

- (1) ownership of voting securities or stock;**
- (2) the terms of a contract; or**
- (3) other means.**

The term does not include power to direct management and policies derived from holding an official position or corporate office with the public utility, utility company, or holding company. A person that owns, controls, or has the power to vote or the power to vote proxies that constitute at least twenty percent (20%) of the total vote power of a public utility, utility company, or holding company is presumed to have control of the public utility, utility company, or holding company.

(c) As used in this section, "holding company" means a company that has control over at least one (1) of the following:

- (1) A public utility (as defined in section 1 of this chapter).**
- (2) A utility company.**

(d) As used in this section, "person" means:

- (1) an individual;**
- (2) a firm;**
- (3) a corporation;**
- (4) a company;**
- (5) a partnership;**



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- (6) a limited liability company;
- (7) an association;
- (8) a trustee;
- (9) a lessee; or
- (10) a receiver.

(e) As used in this section, "reorganization" means a transaction that results in:

- (1) a change in the ownership of a majority of the voting capital stock of a public utility;
- (2) a change in the ownership or control of an entity that owns or controls a majority of the voting capital stock of a public utility;
- (3) the merger of two (2) or more public utilities; or
- (4) the acquisition by a public utility of substantially all the assets of another public utility.

(f) As used in this section, "utility company" means every corporation, company, partnership, limited liability company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment for the:

- (1) conveyance of telegraph or telephone messages;
- (2) production, transmission, delivery, or furnishing of heat, light, water, or power; or
- (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that acquires, owns, or operates any of the foregoing facilities.

(g) A public utility, as defined in section 1 of this chapter, ~~shall~~ **may not do any of the following without approval of the commission after a hearing:**

- (1) Sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation. ~~or~~
- (2) Contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation. ~~without the approval of the commission after hearing. And no such~~
- (3) **Contract for or effect a reorganization of the public utility.**
- (4) **Acquire control of a public utility, utility company, or holding company.**

(h) A person may not acquire control of a public utility or a

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holding company of a public utility without approval of the commission after a hearing.

(i) A holding company that controls one (1) or more public utilities may not acquire control of a utility company without approval of the commission after a hearing.

(j) A public utility, except temporarily or in case of emergency and for a period of not exceeding thirty (30) days, ~~shall~~ **may not** make any special contract at rates other than those prescribed in its schedule of rates theretofore filed with the commission, and in force, with any other utility for rendering any service to or procuring any service from such other utility, without the approval of the commission. It shall be lawful, however, for any utility to make a contract for service to or from another utility at rates previously filed with and approved by the commission and in force.

~~(b)~~ **(k)** The approval of the commission of the sale, assignment, transfer, lease, or encumbrance of a franchise or any part thereof under this section shall not revive or validate any lapsed or invalid franchise, or enlarge or add to the powers and privileges contained in the grant of any franchise or waive any forfeiture. No such public utility shall directly or indirectly purchase, acquire, or become the owner of any of the property, stock, or bonds of any other public utility authorized to engage or engaged in the same or a similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit unless authorized so to do by the commission.

(l) The commission shall issue an order not later than one hundred eighty (180) days after a petition seeking approval is filed under this section. If the commission fails to issue an order within one hundred eighty (180) days after the petition is filed, the petition is considered approved.

~~(c)~~ **(m)** Nothing contained in this section shall prevent the holding of stock lawfully acquired before May 1, 1913, or prohibit, upon the surrender or exchange of said stock pursuant to a reorganization plan, the purchase, acquisition, taking, or holding by the owner of a proportionate amount of the stock of any new corporation organized to take over at foreclosure or other sale, the property of the corporation whose stock has been thus surrendered or exchanged.

~~(d)~~ **(n)** Every contract by any public utility for the purchase, acquisition, assignment, or transfer to it of any of the stock of any other public utility by or through any person, partnership, limited liability company, or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such

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stock upon the books of the corporation pursuant to any such contract shall be effective for any purpose."

Page 2, line 12, after "Imposes" insert **"on a utility, other than a telephone company (as defined in IC 8-1-2-88) that provides local exchange telephone service,"**.

Page 2, line 12, delete "of not more than twenty-five" and insert **"of:**

(1) five thousand dollars (\$5,000) for an initial violation or noncompliance found under subsection (d); or

(2) fifteen thousand dollars (\$15,000) for a second or subsequent violation or noncompliance found under subsection (d)."

Page 2, delete line 13.

Page 2, line 14, delete "noncompliance found under subsection (d)." and block left beginning with "For".

Page 2, line 41, after "(e)." insert **"If the attorney general prevails in an action under this subsection, the attorney general may recover reasonable attorney's fees and court costs."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1116 as introduced.)

FRY, Chair

Committee Vote: yeas 8, nays 4.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1116 be amended to read as follows:

Page 5, line 2, delete "eighty (180)" and insert "**thirty-five (135)**".

Page 5, line 4, delete "eighty (180)" and insert "**thirty-five (135)**".

(Reference is to HB 1116 as printed January 31, 2002.)

FRY

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1116 be amended to read as follows:

Page 8, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 7. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 8.4. Merchant Power Plants

Sec. 1. This chapter does not apply to a merchant power plant that has filed a petition with the commission under IC 8-1-2.5 before March 1, 2001, seeking an order that the commission decline to exercise, in whole or in part, its jurisdiction over the merchant power plant.

Sec. 2. (a) As used in this chapter, "merchant power plant" means a facility within Indiana used for the:

(1) production, transmission, delivery, or furnishing of heat, light, or power; and

(2) sale of electric energy exclusively on the wholesale market; to other public utilities, energy service providers, or power marketers within or outside Indiana.

(b) The term includes a facility that has made a significant alteration to the labor used to construct or remodel the facility. For purposes of this subsection, a facility makes a significant alteration in the labor used to construct or remodel a facility if the person uses contractors, subcontractors, or work crews that include workers who are not participants in or have not completed a jointly administered labor and management apprenticeship program approved by the United States Department of Labor's Bureau of Apprenticeship Training.

(c) The term does not include a facility that is owned, controlled,



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or operated by a person that is obligated contractually to provide substantially all of the wholesale power requirements of an electricity supplier under a contract extending at least five (5) years.

Sec. 3. Except as provided in section 1 of this chapter, a merchant power plant is subject to the jurisdiction of the commission.

Sec. 4. (a) The commission shall consider the following when acting upon any petition by a merchant power plant under IC 8-1-2.5 or IC 8-1-8.5:

- (1) Location.
- (2) Need.
- (3) Financing.
- (4) Reporting requirements.
- (5) Impact on electric, water, and natural gas suppliers and customers.
- (6) The recommendation of the department of natural resources under section 12 of this chapter.

(b) The commission shall issue a decision either approving or denying a merchant power plant's petition under IC 8-1-2.5 or IC 8-1-8.5 not later than eighteen (18) months after the date of the petition.

Sec. 5. (a) When petitioning the commission under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant must establish proof of financial responsibility by filing one (1) or a combination of the following with the commission:

- (1) A fully funded trust fund agreement.
- (2) A surety bond with a standby trust fund agreement.
- (3) A letter of credit with a standby trust fund agreement.
- (4) An insurance policy with a standby trust fund agreement.
- (5) Proof that the merchant power plant meets a financial test established by the commission and equivalent to one (1) of the items in subdivisions (1) through (4).

(b) The amount of financial responsibility that a merchant power plant must establish under this section shall be determined by the commission. In all cases, the amount must be sufficient to close the merchant power plant in a manner that:

- (1) minimizes the need for further maintenance and remediation; and
- (2) provides reasonable, foreseeable, and necessary maintenance and remediation after closure for at least twenty (20) years after the merchant power plant ceases operations.



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- (c) The commission may use:
- (1) a trust fund agreement;
 - (2) a surety bond;
 - (3) a letter of credit;
 - (4) an insurance policy; or
 - (5) other proof of financial responsibility;

filed under this section for the closure or post-closure monitoring, maintenance, or remediation of a merchant power plant approved by the commission, if the merchant power plant does not comply with closure or post-closure standards established by the commission under subsection (d).

(d) The commission shall adopt rules under IC 4-22-2 to establish the following:

- (1) Standards for the proper closure and post-closure monitoring, maintenance, and remediation of merchant power plants.
- (2) Criteria for how money in a trust fund agreement, a surety bond, a letter of credit, an insurance policy, or other proof of financial responsibility provided by a merchant power plant may be released to the merchant power plant when the merchant power plant meets the closure and post-closure standards established under subdivision (1).

Sec. 6. (a) Not later than seven (7) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall:

- (1) send notice of the petition by United States mail to all record owners of real property located within one-half (1/2) mile of the proposed facility; and
- (2) cause notice of the petition to be published in a newspaper of general circulation in each county in which the facility or proposed facility is or will be located.

(b) The notice of the petition shall include:

- (1) a description of the facility or proposed facility; and
- (2) the location, date, and time of the field hearing required by section 7 of this chapter.

Sec. 7. Not later than thirty (30) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall conduct a field hearing at a location in a county in which the facility or proposed facility is or will be located. The purpose of the field hearing is to determine local support for the merchant power plant.

Sec. 8. Not later than thirty (30) days after the field hearing required by section 7 of this chapter, a majority of the persons

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described in section 6(a)(1) of this chapter may request in writing a hearing before the commission.

Sec. 9. (a) Not later than thirty (30) days after a hearing is requested under section 8 of this chapter, the commission shall conduct a hearing at a location in a county in which the facility or proposed facility is or will be located. The hearing required by this subsection must be held:

- (1) before or at the same time as the hearing required under IC 8-1-8.5-5(b); and
- (2) before the commission issues a certificate of public convenience and necessity under IC 8-1-8.5.

(b) At least ten (10) days before the scheduled hearing, notice of the hearing must be served by first class mail on:

- (1) all record owners of property located within one-half (1/2) mile of the proposed facility; and
- (2) the merchant power plant.

(c) The parties to the hearing include:

- (1) a person entitled to notice under section 9(b)(1) of this chapter; and
- (2) the merchant power plant.

(d) The commission shall accept written or oral testimony from any person who appears at the public hearing, but the right to call and examine witnesses is reserved for the parties to the hearing.

(e) The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

Sec. 10. Not later than forty-five (45) days after a hearing is conducted under section 9 of this chapter, the commission shall issue written findings based on the testimony presented at the hearing. To the extent the commission's findings differ from testimony presented at the hearing, the commission must explain its findings.

Sec. 11. When considering whether to approve a merchant power plant, the commission shall give preference to the following locations for siting:

- (1) Brownfield sites that are isolated from populated areas.
- (2) Sites of existing or former utilities that can be replaced or repowered.
- (3) Other sites identified for power plant or heavy industrial development in local land use plans before the initiation of site selection for the facility.

Sec. 12. (a) For purposes of this section:

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(1) "department" refers to the department of natural resources; and

(2) "water resource" has the meaning set forth in IC 14-25-7-8.

(b) When considering whether to approve a merchant power plant, the commission shall obtain a recommendation from the department regarding the merchant power plant's planned use of and its potential effect on the water resource.

(c) To make its recommendation, the department may do the following:

(1) Rely on the merchant power plant's water resource assessment under subsection (d).

(2) Consult with and advise users of the water resource.

(3) Enter upon any land or water in Indiana to evaluate the effect of the merchant power plant on the water resource.

(4) Conduct studies to evaluate the availability and most practical method of withdrawal, development, conservation, and use of the water resource.

(5) Require metering or other reasonable measuring of water withdrawals and reporting of the measurement to the department.

(6) Engage in any other activity necessary to carry out the purposes of this section.

(d) A merchant power plant shall provide an assessment of its effect on the water resource and its users to the commission and the department. The assessment shall be prepared by a licensed professional geologist (as defined in IC 25-17.6-1-6.5) or an engineer licensed under IC 25-31-1. The assessment must include the following information:

(1) Sources of water supply.

(2) Total amount of water to be used by the merchant power plant for each source.

(3) Location of wells or points of withdrawal.

(4) Ability of the water resource to meet the needs of the merchant power plant and other users.

(5) Probable effects of the merchant power plant's use and consumption of the water resource on other users.

(6) Alternative sources of water supply.

(7) Conservation measures proposed by the merchant power plant for reducing the plant's effect on the water resource.

(8) Other information required by any other law, rule, or regulation.



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Sec. 13. Following the approval of a petition by the commission, the merchant power plant shall:

- (1) notify the commission upon becoming an affiliate of any regulated Indiana utility selling electricity at retail to Indiana consumers, at which time the commission may reassert any jurisdiction it had declined under IC 8-1-2.5;**
- (2) obtain prior commission approval with respect to the sale of any electricity to any affiliated regulated Indiana retail utility, or any affiliate of a regulated Indiana retail utility; and**
- (3) obtain prior commission approval of any transfers of ownership of the facility or its assets."**

Page 8, after line 35, begin a new paragraph and insert:

"SECTION 8. An emergency is declared for this act."

Re-number all SECTIONS consecutively.

(Reference is to HB 1116 as printed January 31, 2002.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1116 be recommitted to a Committee of One, its author, with specific instructions to amend as follows:

Page 8, delete lines 6 through 8.

(Reference is to HB 1116 as printed January 31, 2002.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred House Bill 1116, begs leave to report that said bill has been amended as directed.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill No. 1116, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective date in SECTION 4 with "[EFFECTIVE UPON PASSAGE]".

Page 1, delete lines 1 through 17.

Delete pages 2 through 6.

Page 7, delete lines 1 through 32.

Page 7, line 35, delete "As used in this section, "utility" means:" and insert **"This section does not apply to any of the following:**

(1) A merchant power plant that has filed a petition with the commission under IC 8-1-2.5 before March 1, 2002, seeking an order that the commission decline to exercise, in whole or in part, its jurisdiction over the merchant power plant. This section does not apply to the expansion of a merchant power plant described in this subdivision if the expansion occurs at the same site.

(2) A corporation operating under IC 8-1-13.

(3) A nonprofit corporation most of whose members are operating under IC 8-1-13.

(4) A joint agency created and operating under IC 8-1-2.2.

(b) As used in this section, "merchant power plant" means a facility within Indiana used for the:

(1) production of electric energy; and

(2) sale of electric energy exclusively on the wholesale market to other public utilities, energy service providers, or power marketers within or outside Indiana.

(c) A merchant power plant is subject to the jurisdiction of the commission.

(d) For any petition filed by a merchant power plant under IC 8-1-2.5 or IC 8-1-8.5, the commission may consider the following:

(1) Location of the merchant power plant.

(2) Need for the electricity to be generated or other benefits to be provided by the merchant power plant.

(3) Effect of the merchant power plant on electric, water, and natural gas suppliers and customers.

(4) Financing for the merchant power plant.

(5) Other factors the commission considers relevant."



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Page 7, delete lines 36 through 42, begin a new paragraph and insert:

"SECTION 2. IC 8-1-8.8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 8.8. Utility Generation and Clean Coal Technology

Sec. 1. (a) The general assembly makes the following findings:

- (1) Growth of Indiana's population and economic base has created a need for new energy generating facilities in Indiana.**
- (2) The development of a robust and diverse portfolio of energy generating capacity, including the use of renewable energy resources, is needed if Indiana is to continue to be successful in attracting new businesses and jobs.**
- (3) Indiana has considerable natural resources that are currently underutilized and could support development of new energy generating facilities at an affordable price.**
- (4) Certain regions of Indiana, such as southern Indiana, could benefit greatly from new employment opportunities created by development of new energy generating facilities utilizing the plentiful supply of coal from the geological formation known as the Illinois Basin.**
- (5) Technology can be deployed that allows high sulfur coal from the geological formation known as the Illinois Basin to be burned efficiently while meeting strict state and federal air quality limitations. Specifically, the state should encourage the use of advanced clean coal technology, such as coal gasification.**
- (6) It is in the public interest for the state to encourage the construction of new energy generating facilities that increase the in-state capacity to provide for current and anticipated energy demand at a competitive price.**

(b) The purpose of this chapter is to enhance Indiana's energy security and reliability by ensuring all the following:

- (1) Indiana's energy generating capacity continues to be adequate to provide for Indiana's current and future energy needs, including the support of the state's economic development efforts.**
- (2) The vast and underutilized coal resources of the Illinois Basin are used as a fuel source for new energy generating facilities.**
- (3) The electric transmission system in Indiana is upgraded to distribute additional amounts of electricity more efficiently.**



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(4) Jobs are created as new energy generating facilities are built in regions throughout Indiana.

Sec. 2. As used in this chapter, "clean coal and energy projects" means any of the following:

(1) Any of the following projects:

(A) Projects at new energy generating facilities that employ the use of clean coal technology and that are fueled primarily by coal or gases derived from coal from the geological formation known as the Illinois Basin.

(B) Projects to provide advanced technologies that reduce regulated air emissions from existing energy generating plants, such as flue gas desulfurization and selective catalytic reduction equipment.

(C) Projects to provide electric transmission facilities.

(2) Projects to develop alternative energy sources, including renewable energy projects.

(3) The purchase of fuels produced by a coal gasification facility.

Sec. 3. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur, mercury, or nitrogen oxides or other regulated air emissions associated with the combustion or use of coal; and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

Sec. 4. As used in this chapter, "coal gasification facility" means a facility in Indiana that uses a manufacturing process that converts coal into a clean gas that can be used as a fuel to generate energy.

Sec. 5. As used in this chapter, "costs associated with qualified utility system property" means capital, operation, maintenance, depreciation, tax costs, and financing costs of or for qualified utility system property.

Sec. 6. As used in this chapter, "eligible business" means an energy utility (as defined in IC 8-1-2.5-2) that:



- (1) proposes to construct, repower, or acquire a new energy generating facility;
- (2) proposes to construct, repower, or acquire a project described in section 2(1) of this chapter;
- (3) undertakes a project to develop alternative energy sources, including renewable energy projects; or
- (4) purchases fuels produced by a coal gasification facility.

Sec. 7. As used in this chapter, "group" refers to the forecasting group established by IC 8-1-8.5-3.5.

Sec. 8. (a) As used in this chapter, "new energy generating facility" refers to a facility that satisfies all the following:

- (1) The facility is a:
 - (A) newly constructed, newly repowered, or newly acquired energy generation plant; or
 - (B) newly constructed generation capacity expansion at an existing facility;

dedicated primarily to serving Indiana retail customers.

- (2) The acquisition, repowering, construction, or expansion of the facility was completed by an Indiana utility after July 1, 2001.

- (3) The facility has an aggregate rated electric generating capacity of at least one hundred (100) megawatts for all units at one (1) site or a generating capacity of at least four hundred thousand (400,000) pounds per hour of steam.

(b) The term includes the transmission lines and associated equipment that transfers energy from points of supply to points of delivery.

Sec. 9. As used in this chapter, "qualified utility system property" means any new energy generating facility used, or to be used, in whole or in part, on a utility system to provide retail energy service (as defined in IC 8-1-2.5-3) regardless of whether the service is provided under IC 8-1-2.5 or another provision of this article.

Sec. 10. (a) As used in this chapter, "renewable energy resources" means alternative sources of renewable energy, including the following:

- (1) Energy from wind.
- (2) Solar energy.
- (3) Photovoltaic cells and panels.
- (4) Dedicated crops grown for energy production.
- (5) Organic waste biomass.
- (6) Hydropower from existing dams.



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(b) The term does not include energy from the incineration, burning, or heating of any of the following:

- (1) Waste wood.
- (2) Tires.
- (3) General household, institutional, commercial, industrial lunchroom, office, or landscape waste.
- (4) Construction or demolition debris.

Sec. 11. (a) The commission shall encourage clean coal and energy projects by creating the following financial incentives for clean coal and energy projects:

- (1) The timely recovery of costs incurred during construction and operation of projects described in section 2(1) of this chapter.
- (2) The authorization of up to three (3) percentage points on the overall rate of return that would otherwise be allowed to be earned on projects described in subdivision (1).
- (3) Financial incentives for the purchase of fuels produced by a coal gasification facility, including cost recovery and the incentive available under subdivision (2).
- (4) Financial incentives for projects to develop alternative energy sources, including renewable energy projects.
- (5) Other financial incentives the commission considers appropriate.

(b) An eligible business must file an application to the commission for approval of a clean coal and energy project under this section.

(c) The commission shall promptly review an application filed under this section for completeness. The commission may request additional information the commission considers necessary to aid in its review.

(d) The commission shall issue a determination of a project's eligibility for the financial incentives described in subsection (a) not later than ninety (90) days after the date of the application.

Sec. 12. (a) The commission shall provide financial incentives to eligible businesses for new energy generating facilities in the form of timely recovery of the costs incurred in connection with the construction, acquisition, repowering, expansion, operation, or maintenance of the facilities.

(b) An eligible business seeking authority to timely recover the costs described in subsection (a) must apply to the commission for approval of a rate adjustment mechanism in the manner determined by the commission.



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(c) An application must include the following:

- (1) A schedule for the completion of construction, repowering, acquisition, or expansion of the new energy generating facility for which rate relief is sought.
- (2) Copies of the most recent integrated resource plan filed with the commission.
- (3) The amount of capital investment by the eligible business in the new energy generating facility.
- (4) Other information the commission considers necessary.

(d) The commission shall allow an eligible business to recover the costs associated with qualified utility system property if the eligible business provides substantial documentation that the expected costs associated with qualified utility system property and the schedule for incurring those costs are reasonable.

(e) The commission shall allow an eligible business to recover the costs associated with the purchase of fuels produced by a coal gasification facility if the eligible business provides substantial documentation that the costs associated with the purchase are reasonable.

(f) A retail rate adjustment mechanism proposed by an eligible business under this section may be based on actual or forecasted data. If forecast data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct for any variance between the forecasted costs and the actual costs.

Sec. 13. An eligible business shall file a monthly report with the department of commerce stating the following information:

- (1) The amount of Illinois Basin coal, if any, purchased during the previous month for use in a new energy generating facility.
- (2) The amount of any fuel produced by a coal gasification facility and purchased by the eligible business during the previous month.
- (3) Any other information the department of commerce may reasonably require.

Sec. 14. The group shall conduct an annual study on the use, availability, and economics of using renewable energy resources in Indiana. Each year, the group shall submit a report on the study to the commission for inclusion in the commission's annual report to the regulatory flexibility committee described in IC 8-1-2.5-9 and IC 8-1-2.6-4. The report must include suggestions from the group to encourage the development and use of renewable energy resources and technologies appropriate for use in Indiana."



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Delete pages 8 through 12.

Page 13, delete lines 1 through 28.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1116 as reprinted February 6, 2002.)

SERVER, Chairperson

Committee Vote: Yeas 8, Nays 1.

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